disturb the finding of the Board that the respondents are a trade association.

It follows that the Comptroller's assessment is confirmed and the Board's majority finding set aside. The respondents will pay the appellant taxed costs here and before the Board.

Appeal allowed.

Solicitors: *Drew & Napier.*

ANG TOON HUAN v. PUBLIC PROSECUTOR

[C. A. (Mathew C.J., Whyatt C.J. (S) and Good J.) April 26, 1956]

[K. L. — F.M. Criminal Reference No. 2 of 1956]

Rubber Supervision Enactment, 1937, s. 38(ii) — Prosecution under the Enactment may be conducted by police officer — Criminal Procedure Code (Cap. 6), s. 380(ii).

This was a reference under section 34 of the Courts Ordinance, 1948, for determination by the Court of Appeal: "Whether when a prosecution for an offence under the Rubber Supervision Enactment, 1937 is conducted by an officer other than one of those mentioned in section 38(ii) of the said Enactment the trial is a nullity.

Held: section 38(ii) of the Rubber Supervision Enactment, 1937 is supplementary to section 380 of the Criminal Procedure Code (Cap. 6), and permits of offences under the Enactment being prosecuted by the officers mentioned in section 38(ii) in addition to *inter alia* police officers who are given the necessary power to prosecute under section 380 of the Criminal Procedure Code.

Selamat bin Darmo v. Public Prosecutor[1] **overruled.**

Case referred to:—

(1) *Selamat bin Darmo v. Public Prosecutor* (1955) M.L.J. 241.

CRIMINAL REFERENCE to the Court of Appeal.

M. S. Mahendran for the appellant.

J. G. Adams (Federal Counsel) for the respondent.

Mathew C.J. : — This is a Reference under section 34 of the Courts Ordinance 1948 on the certificate of the learned Judge who heard the appeal from the decision of a Magistrate sitting at Kuala Kangsar. The point for determination by this Court is:—

"Whether when a prosecution for an offence under the Rubber Supervision Enactment, 1937 is conducted by an officer other than one of those mentioned in section 38(ii) of the said Enactment the trial is a nullity."

This point has rightly been referred to this Court, as in *Selamat bin Darmo v. Public Prosecutor*[1] Wilson J. held that:—

"All prosecutions under the Rubber Supervision Enactment must be conducted by the Supervisor or Deputy Supervisor or by any officer appointed under the Enactment and specially authorised to prosecute in writing by the Supervisor or Deputy Supervisor."

Section 38(ii) Rubber Supervision Enactment 1937 reads:—

"Any such prosecution may be conducted by the Supervisor, by any Deputy Supervisor or by any officer appointed under this Enactment and specially authorised thereto in writing by the Supervisor or a Deputy Supervisor."

It was submitted that this provision in the law confined the power to prosecute to those Rubber Supervision Officers specified in the sub-section.

Section 380(ii) Criminal Procedure Code reads:—

"In summary non-seizable cases in the Court of a Magistrate — (a) The Public Prosecutor or a Deputy Public Prosecutor or a Police Officer may appear and conduct any prosecution;"

In the case under review it was a police officer who prosecuted before the learned trial Magistrate.

In our view, section 38(ii) of the Rubber Supervision Enactment, 1937 is supplementary to section 380 of the Criminal Procedure Code, and permits of offences under the Enactment being prosecuted by the officers mentioned in section 38(ii) in addition to *inter alia* police officers who are given the necessary power to prosecute under section 380 of the Criminal Procedure Code

We, therefore, hold that the prosecution in this case was rightly conducted by a police officer and, in consequence, the appeal from the trial Magistrate is dismissed.

Order accordingly.

ANKUR NATH GANGULI v. PUBLIC PROSECUTOR

[C. A. (Mathew C.J., Whyatt C.J. (S) and Good J.) May 30, 1956]

[K. L. — F.M. Criminal Appeal No. 11 of 1956]

Criminal Procedure — Appeal — Record of proceedings — Oral judgment — Addition to — Whether can form part of the record — Courts Ordinance, 1948, s. 21(1).

If a trial Judge gives no reasons which are recorded for convicting an accused person, then and only then by subsection (1) of section 21 of the Courts Ordinance, 1948, he can on notice of appeal being given write his grounds of decision which shall form part of the record. That subsection permits only a written judgment or grounds of decision being included in the record, and this must be either the one or the other, not both. Any addition to the oral judgment cannot form part of the record of appeal.

Case referred to:—

(1) *R. v. Carr-Briant* (1943) 1 K.B. 607.

CRIMINAL APPEAL to the Court of Appeal.

K. A. Seth for the appellant.

J. G. Adams (Federal Counsel) for the respondent.

The following judgment of the Court of Appeal by Mathew C.J. was read by the Assistant Registrar, Supreme Court, Johore Bahru, in open Court on June 12, 1956:

Mathew C.J. : — The appellant in this case was convicted of an offence contrary to section 3(a) of the Corruption Ordinance, 1950 and was sentenced to six months imprisonment. The sixth ground of appeal deals with the addition which the learned trial Judge made to his oral judgment, and Mr. Seth for the appellant has contended that this addition should be disregarded by this Court.

Sub-section (1) of section 21 of the Courts Ordinance, 1948 reads as follows:—

"When a notice of appeal has been lodged the Judge by whom the appellant was convicted shall, if he has not already written his judgment, record in writing the grounds of his decision, and such written judgment or ground of decision shall form part of the record of the proceedings:

Provided that in all cases tried by a jury or with assessors a note (verbatim if such is available) of any charge or summing up of the Judge of the trial Court shall be included in and form part of the record of the proceedings in lieu of such written judgment or grounds of decision:

Provided further that if, any particular case referred to in the first proviso to this sub-section, the trial Judge considers that a written Judgment or the grounds of his decision would be of assistance to the Court of Appeal, or if the Court of Appeal so direct, such written judgment or grounds of decision shall be furnished and shall form part of the record of the proceedings in addition to the charge or summing up".

This means clearly that if reasons for convicting an accused person have not been given and recorded, a trial Judge may record in writing the grounds of his decision and those grounds shall form part of the record. In this case the learned trial Judge gave reasons for convicting the appellant, and his judgment was taken down by his Secretary and was reduced to a written form. This not-too-happily phrased sub-section means, in our view, that if a trial Judge gives no reasons which are recorded for convicting an accused person, then and then only he can on notice of appeal being given write his grounds of decision which shall form part of the record. The sub-section permits only of a written judgment or grounds of decision being included in the record, and this must be either the one or the other, not both. We, therefore, hold that what has been termed an addition to the learned trial Judge's oral judgment cannot form part of the record, and we can have no regard to it. This being so, there is nothing in the learned trial Judge's judgment referring to the evidence of accomplices, and in this respect his judgment is defective.

The payment of the $300 by P.W. 1 being admitted, the whole case turns on section 5 of the Prevention of Corruption Ordinance (No. 5/1950) which reads:—

"Where in any proceedings against a person for an offence under this Ordinance it is proved that any money, gift or other consideration has been paid or given to or accepted or obtained by a person serving under the Crown or the Government or any department thereof or a public body by or from a person or agent of a person holding or seeking to obtain a contract from His Majesty or from the Government or any department thereof or from any public body such money, gift or other consideration shall be deemed to have been paid or given and accepted or obtained corruptly as an inducement or reward as hereinbefore mentioned unless the contrary is proved".

Mr. Seth has contended that on the basis of *Rex v. Carr-Briant*[1], the only burden on the appellant was discharged when he established the probability of his story. The learned trial Judge found himself unable, taking into consideration the surrounding circumstances, to accept his story that the $300 was paid for the purchase of "mental". We agree with the learned trial Judge. The appellant's story was a plausible one and no more. There are inherent improbabilities in that story. The $300 bears no relation to the amount of "mental" which was required to complete the contractor's work. Thirty-five cubic yards were required and, if "mental" were available, this sum would only produce at the market rate of $12 a cubic yard, 25 cubic yards. The difficulty in procuring "mental" was well known to the appellant, and it is inherently improbable that he would have accepted the position of paymaster for the contractor when at the time he received the money he had not even a reasonable prospect of procuring any mental at all. Admittedly, the appellant told a glib story, but on examination it reveals improbabilities which made it fall far short of the standard of proof required of an accused person.

On the case of *Carr-Briant supra* we agree with the learned trial Judge that the appellant failed to discharge the burden of proof placed upon him by section 5 of the Prevention of Corruption Ordinance, and we accordingly dismiss the appeal.

Appeal dismissed.

HUSSAIN BIN MOHAMED v. PUBLIC PROSECUTOR

[A. Cr. J. (Rigby J.) May 10, 1956]

[Kota Bharu — Criminal Appeal No. 35 of 1956]

Criminal Procedure — Police supervision — Whether justified on a conviction of an offence of abduction under Penal Code s. 366.

Police supervision may well be justified in cases where a man is a habitual criminal who commits offences of burglary or housebreaking or theft. A conviction of an offence of abduction under section 366 of the Penal Code as in this case does not warrant the imposition of Police supervision.